REMARKS

Claims 1-43 are pending in this application. Claims 7-16 and 27-43 have been withdrawn. No claims have been added. Claims 1 and 17 have been amended. Reconsideration and allowance of all remaining claims are respectfully requested.

Claim Rejections and Examiner's Response - 35 USC §103

Examiner states on page 2 in this Office Action as follows:

> Claims 1, 4, 5, and 6 are rejected under 35 U.S.C.§103(a) as being unpatentable over "Salmon Patties" in view of Ellis for the reasons set forth in the previous office action.
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> Claims 2 and 3 are rejected under 35 U.S.C.§103(a) as being unpatentable over "Salmon Patties" in view of Ellis in further view of "A Dinner Experiment" and "Dried Food Products" for the reasons set forth in the previous office action.
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> Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Food Products Design" in view of "Salmon Patties" and Ellis for the reasons set forth in the previous office action.
>
> Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of "Salmon Patties." Ellis discloses corn chips that are made from toasted, sheeted, freshly-made masa dough derived from ground whole dent corn kernels (column 2, lines 30-34), wherein the regrind has a moisture content of less than 2% by weight (column 3, lines 47-50) and an oil content of 2-30% by weight (column 2, lines 34-39). "Salmon Patties" discloses the use of ground corn chips as a food additive. As such, it would have been obvious to use any corn chips, such as those of Ellis in the same manner.

Examiner, in response to Applicants' previously-presented arguments, further states on page 3 of this Office Action:

> Applicant argues that Murray et al., U.S. Patent 3,407,070, teaches away from the use of a predominant amount of starch derived from waxy corn as a raw material for ready-to-eat food products. However, this patent was not part of the rejection and in any case is moot because Ellis teaches the use of waxy corn in ready-to-eat products.
>
> Applicant also argues that Ellis does not address Applicant's particular problem or solution for creating a concentrated toasted-flavor additive for enhancing the toasted flavor and toasted appearance of food products. However, "Salmon

> Patties" was relied on as evidence that such a problem was known to one of ordinary skill in the art and had also previously been addressed in the art.
>
> Applicant argues that Ellis teaches away from the use of dent corn in low-oil content products. However, Ellis discloses a food product comprising a blend of dent and waxy corn masa and having an oil content ranging from about 2 to about 30 wt.% (column 2, lines 34-39). The claim uses "comprises" which is open-ended and there is nothing in the claim language to exclude waxy corn masa. As Ellis does teach the use of dent corn masa, the prior art still reads on the claimed invention.

This rejection is respectfully traversed. Applicants hereby incorporate their previously-presented arguments regarding the rejections under Section 103, which arguments appear in Applicants' August 15, 2005 Response to Office Action of June 15, 2005. Additional arguments are also presented below.

Pursuant to Examiner's suggestion, Applicants have amended the claims such that the corn-kernels element of all claims is further modified by the phrase, "consist essentially of." Thus independent Claim 1 now reads:

> A toasted corn flavor additive comprising a regrind of toasted, sheeted, freshly-made masa dough derived from ground whole corn kernels, wherein said whole corn kernels consist essentially of dent corn, wherein said regrind has an oil content of about 2.0% to about 5.0% by weight, and further wherein said regrind has a moisture content ranging from about 0.1% to about 15% by weight.

Likewise, independent Claim 17 has been amended so that step a) of the method now requires:

> a) forming a fresh masa dough derived essentially from dent corn.

As previously explained, none of the cited references, alone or in combination, discloses or suggests the invention claimed. Section 706.02(j) of the MPEP states that "[t]o establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations." Furthermore, there is no suggestion or incentive to combine the references. As stated in Section 706.02(j) of the MPEP, "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings."

As is known to those of ordinary skill in the art, most corn-derived consumer products are made using dent corn, not waxy corn. Whereas Ellis relates to snack foods made from waxy corn (see Ellis et al. in col. 1, lines 5-11), Applicants' invention – as defined in amended Claim 1, amended Claim 17, dependent Claims 2-6 (which depend from and incorporate all limitations of Claim 1), and dependent Claims 18-26 (which depend from and incorporate all limitations of Claim 17) – originates from dent corn. Similarly, none of the cited recipes disclose or suggest substituting waxy corn as the starting material, which waxy corn is specifically required in Ellis. Waxy corn is typically used for livestock feed or for making thickeners and stabilizers and is not used or processed for human consumption. As is taught in column 1, lines 24-28 of Ellis, "The varying amounts of amylopectin and amylose in the starch compositions of dent and waxy corns produce substantially different characteristics." Ellis then continues in the next sentence, "Thus, dent and waxy corns are not considered to be interchangeable materials for most applications." In fact, various other prior art references teach away from the use of waxy corn as a raw material for consumer products. For example, as noted by Ellis in column 1, lines 59-62, "Murray et al. (U.S. Pat. No. 3,407,070) teach away from the use of a predominant amount of starch derived from waxy corn as a raw material for read(y)-to-eat food products." Section 2143.01 of the MPEP mandates that "[i]f the proposed modification or combination of the prior art would

change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency)." Thus, one of ordinary skill in the art would not be motivated to make the changes proposed by the Examiner, as prior art references such as Murray et al. teach away from the Ellis et al.'s use of waxy corn to produce products intended for human consumption.

Furthermore, Ellis does not address, nor does it even mention, Applicants' particular problem or solution for creating a concentrated toasted-flavor additive for enhancing the toasted flavor and toasted appearance of food products. Although the Ellis reference discloses a baked corn product, Ellis is directed to an entirely different problem of producing low-oil content corn products having a tender texture and derived from waxy corn. In fact, Ellis teaches away from Applicants' low-oil-content flavor additive made from traditional dent corn. Note how Ellis teaches that dent corn should not be used for low-oil content product: in column 3, lines 64-68, Ellis states that "Waxy corn masa, unlike dent corn masa, is also amenable to baking to yield a very tender low oil snack food product [that] is contrasted to dent corn masa which becomes hard and unpalatable at such low oil levels." Furthermore, Ellis clearly admits in column 4, lines 58-60 that "white waxy corn masa produces a cooked food product that is tender, but not having a colorful appeal to the consumer." Ellis similarly states in column 7, lines 18-22 that "tortilla chips made from white waxy corn were determined to be significantly lighter in color . . . and blander flavor than corresponding tortilla chips derived from dent corn masa." In describing one example of forming a baked, low-oil product using waxy corn, Ellis firmly states in column 7, lines 66-69, "Dent corn masa cannot be similarly processed and retain palatable characteristics." Thus, it would not have been obvious to one skilled in the art to combine the high-oil-content fried corn chip grind of Salmon Patties with Ellis et al.'s low-oil-content, bland, lighter-colored,

baked, waxy-corn-derived product to produce Applicants' dent-corn-derived, low-oil-content, toasted flavor additive.

Note, also: if Ellis's waxy corn were used to form the freshly-made masa dough of Applicants' claimed invention, such use of waxy corn would materially affect the basic and novel characteristics of Applicants' claimed invention. The goal of Applicants' invention, as previously explained, is to provide a flavor additive capable of enhancing the toasted flavor and toasted appearance of food products, particularly snack foods derived from corn. As mentioned above, Ellis clearly admits in column 4, lines 58-60 that "white waxy corn masa produces a cooked food product that is tender, but not having a colorful appeal to the consumer." Ellis similarly states in column 7, lines 18-22 that "tortilla chips made from white waxy corn were determined to be significantly lighter in color . . . and blander flavor than corresponding tortilla chips derived from dent corn masa." Since the majority of snack-food corn products are derived from dent corn rather than waxy corn, it would be counter-productive to use a lighter and blander ingredient – i.e. waxy corn – as the starting material for an additive intended to enhance the toasted appearance and flavor of foods that are already more colorful and flavorful – i.e. dent corn.

In light of the amendments and arguments presented above, Applicants submit that the totality of the evidence shows that Applicants' invention defined in their Claims would have been non-obvious at the time of their invention.

CONCLUSION

In light of the amendments and the arguments made by Applicants above, as well as the evidence previously submitted, Applicants submit that all existing claims are now in a condition for allowance. Applicants respectfully request that Examiner withdraw all restrictions and rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or William Wang at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, LLP Deposit Account 50-0392.

Respectfully submitted by:

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